

# **EXHIBIT A**

1 AUGUSTINE

2 Q. If you turn to the second page of Exhibit 2,  
3 the headline is, "Reservoirs of Infection."  
4 You wrote the -- the text here, correct?

5 A. I don't recall.

6 Q. Do you recall if you -- if you did write any  
7 of this text?

8 A. I mean, most of what we write is a group  
9 effort, so I probably participated.

10 Q. Okay. Who else might -- would have  
11 participated in this group effort?

12 A. It could be Brent Augustine, it could be  
13 Garrett Augustine. This was written back  
14 when Mark Albrecht was still there. It was  
15 probably proofed by Mr. Benham.

16 Q. Anyone else who might have participated in  
17 the group process of writing Exhibit  
18 Number 2?

19 A. I can't think of anybody else.

20 Q. Brent and Garrett Augustine are your sons; is  
21 that right?

22 A. That's correct.

23 Q. Do either one of them have any medical  
24 training?

25 A. No.

1 AUGUSTINE

2 (Whereupon, Exhibit 16 was  
3 marked for identification.)

4 BY MR. COREY GORDON:

5 Q. I'm going to show you Exhibit 16. It's a  
6 chain of e-mails. The top page is -- the top  
7 e-mail is from you to J. Randall Benham, "Re:  
8 Guide." J. Randall Benham is your -- your  
9 lawyer, right?

10 A. Yes.

11 Q. He's the Augustine in-house lawyer, right?

12 A. That's correct.

13 Q. And if you drop down to the bottom of the  
14 first page, it says -- the part of this  
15 e-mail chain from J. Randall Benham, he  
16 wrote, "David and Gabe, Scott and I are" --  
17 let me start again.

18 "David and Gabe, Scott and I are  
19 preparing a detailed guide to suing 3M  
20 Bair Hugger for orthopedic implant  
21 infections. It will contain background  
22 summaries of and links to scientific  
23 articles, explanations of the ideology of  
24 joint infections, a timeline of 3M's  
25 knowledge and failure to warn, discovery

1 AUGUSTINE

2 suggestions, and a half dozen other useful  
3 things."

4 "We intend to offer it to other  
5 plaintiffs' firms around the country who  
6 expressed an interest in jumping on this  
7 bandwagon. Our staff is preparing a list of  
8 the e-mail addresses of AAJ members who do  
9 this work, and we may do an e-mail blast.  
10 Communications in the AAJ publications may  
11 also be a good idea."

12 "My question: Would you like KH to  
13 be the author of this guide? It would help  
14 establish KH as the leader in this area. Of  
15 course, if KH is the listed author, you guys  
16 will want to be comfortable with the content  
17 and I will run everything past you."

18 "We are going forward either way,  
19 but I wanted to give you the opportunity if  
20 you are interested. Randy."

21 Did I read that correctly?

22 A. Yes.

23 Q. So whether Kennedy Hodges was going to agree  
24 to be listed as the author of this guide or  
25 not, you and Mr. Benham were preparing a

1 AUGUSTINE

2 detailed guide to suing 3M Bair Hugger for  
3 orthopedic implant infections, right?

4 A. Yes, we were.

5 Q. And if Kennedy Hodges didn't want to sign on,  
6 you were going to send it directly to  
7 plaintiffs' lawyers yourself, right?

8 A. I -- that's what it says, so I assume we  
9 were.

10 Q. Okay. And you're part of -- you're on this  
11 e-mail chain, right? This isn't the first  
12 time you've seen this, right?

13 A. Well, I don't recall this, but...

14 Q. Okay. Well, do you recall David Hodges  
15 saying, Yes, we would like to be lead on  
16 this, let's discuss next week?

17 A. No.

18 Q. Okay. Do you remember that David Hodges  
19 agreed to have his firm appear as the author  
20 of this Exhibit 15, this Guide to Product  
21 Liability Litigation?

22 MR. BENHAM: Objection to form.

23 THE WITNESS: And I don't know any  
24 details about that.

25 BY MR. COREY GORDON:

1 AUGUSTINE

2 Q. Who would?

3 A. Randy would be the -- the main guy there.

4 Q. Mr. Benham?

5 A. Correct.

6 Q. Okay. And by the way, on Exhibit 16 where  
7 it says, "David and Gabe," the David is  
8 David Hodges, right?

9 A. I presume. I don't know.

10 Q. And Gabe is Gabriel Assaad, right?

11 A. Again, I presume. I don't know. I didn't  
12 write the e-mail.

13 Q. Who is Dan Grewe?

14 A. He's our marketing manager.

15 (Whereupon, Exhibit 17 was  
16 marked for identification.)

17 BY MR. COREY GORDON:

18 Q. I'll show you what's been marked as  
19 Exhibit 17.

20 MR. ASSAAD: Do you have a copy  
21 for me?

22 MR. COREY GORDON: I think I --

23 MR. GOSS: (Hands document.)

24 MR. COREY GORDON: Oh, sorry.

25 BY MR. COREY GORDON:

1 AUGUSTINE

2 Hodges was, "Looks good, thanks."

3 Do you see that?

4 A. Where -- where is the, "Looks good"?

5 Q. On the first page?

6 A. Okay, yes.

7 Q. Why was your marketing manager sending out a  
8 guide to products liability litigation to  
9 plaintiffs' lawyers ostensibly written by  
10 Kennedy Hodges, LLP?

11 MR. BENHAM: Objection to form.

12 THE WITNESS: I don't know.

13 BY MR. COREY GORDON:

14 Q. Do you recall any discussions internally at  
15 your company as to whether it was appropriate  
16 for your company to be communicating with  
17 plaintiffs' lawyers and sending out a  
18 document that you wrote but had Kennedy  
19 Hodges' name on it?

20 MR. BENHAM: Objection; assumes  
21 facts not in evidence, form of the question.

22 THE WITNESS: No, I don't recall.

23 BY MR. COREY GORDON:

24 Q. Did you know that that happened, that --  
25 that -- strike that.

1 AUGUSTINE

2 Were you aware that your company was  
3 involved in sending out a guide to how to sue  
4 3M to plaintiffs' lawyers?

5 A. That we were involved in the sending of it?

6 Q. Yes.

7 A. No, I was not.

8 (Whereupon, Exhibit 18 was  
9 marked for identification.)

10 BY MR. COREY GORDON:

11 Q. I'll show you what's been marked as  
12 Exhibit 18. Begin at the second page at the  
13 bottom. This is an e-mail chain working  
14 backwards. The first e-mail in this chain is  
15 from your company attorney J. Randall Benham  
16 to David W. Hodges and Gabriel Assaad with a  
17 cc to you, and the subject is, "Guide,"  
18 right?

19 A. Correct.

20 Q. Do you have any reason to think you didn't  
21 get this?

22 A. No, I probably got it.

23 Q. Okay. And Mr. Benham says to David Hodges  
24 and Gabriel Assaad, "David and Gabe, The  
25 guide that we propose sending to interested



1 AUGUSTINE

2 Bair Hugger off using his hospital standard  
3 microbiological testing protocols?

4 A. No.

5 Q. No one ever told you that Legg also tried to  
6 culture bacteria with a Bair Hugger on and  
7 couldn't; is that right?

8 MS. CONLIN: Objection as to form.

9 THE WITNESS: I was not aware that  
10 he did anything like that.

11 MR. COREY GORDON: Okay.

12 (Whereupon, Exhibit 22 was  
13 marked for identification.)

14 BY MR. COREY GORDON:

15 Q. I'll show you now what's marked as  
16 Exhibit 22. It's a series of e-mails, and I  
17 want to start with the one on the second page  
18 from J. Randall Benham to David Hodges and  
19 Gabriel Assaad with a carbon copy to  
20 Scott Augustine and Brent Augustine, the  
21 subject is, "The guide" -- or just, "Subject:  
22 Guide."

23 And Mr. Benham says, "I have revised  
24 the e-mail to indicate that the Walton cases  
25 at a very" -- " in a very early stage and

1 AUGUSTINE

2 that the guide is a work in progress.

3 Changes are in red. You offered to send the  
4 scientific portion of the guide." Did I read  
5 that correctly?

6 A. Yes.

7 Q. Why was ABD's in-house lawyer revising an  
8 e-mail ostensibly from David Hodges and  
9 Gabriel Assaad?

10 A. I don't know.

11 Q. Okay. Further down in this same e-mail  
12 Mr. Benham says, "As you know, our goal is to  
13 get this information to as many PI attorneys  
14 as possible" -- "as quickly as possible."  
15 Did I read that correctly?

16 A. Yes.

17 Q. Do you know why it was your goal to get the  
18 roadmap to suing 3M to as many personal  
19 injury lawyers as quickly as possible?

20 MS. CONLIN: Objection as to form.

21 MR. BENHAM: Objection; form.

22 THE WITNESS: I guess because I  
23 had told him that we were going to help in  
24 any way we could to accomplish this.

25 BY MR. COREY GORDON:

1 AUGUSTINE

2 Q. Why -- well, strike that. Okay.

3 In the first numbered point he  
4 comments on the Walton case and having -- and  
5 generate -- that generating valuable  
6 experience to share with other attorneys.  
7 And Mr. Benham says, "This, however, could  
8 take many months and we can't wait that long  
9 to engage other attorneys."

10 Why couldn't you wait that long?

11 A. I didn't write this, I don't know.

12 Q. You have -- and when you saw this you didn't  
13 go down to Mr. Benham's office and say, Hey,  
14 why -- why do -- why are we in such a hurry  
15 to engage other attorneys?

16 A. No, I didn't go down to his office and ask  
17 him that.

18 Q. Okay. And then in the end of the second  
19 point he says, "Again, we don't want to wait  
20 months to share this information with  
21 others." Did I read that correctly?

22 A. That's correct.

23 Q. And if you continue now on to the first page,  
24 a follow-up exchange of e-mails. Again, you  
25 were copy -- copied on it.